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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

PLACER COUNTY DEPUTY SHERIFFS' ASSOCIATION and NOAH FREDERITO, Petitioners, vs. COUNTY OF PLACER, Respondent.	Case No.: S-CV-0047770 **PETITIONERS' OPPOSITION TO RESPONDENT'S DEMURRER** Date: March 3, 2022 Time: 8:30 a.m. Dept: 42

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I. INTRODUCTION

In our democracy, the California Constitution protects the electorates' initiative powers. In three elections over the last 44 years, Placer County voters have exercised their Article II, Section 11 rights, first to enact, and then twice to retain an apolitical method of setting their deputies' base salary at the average of neighboring counties, while maintaining the Placer County Board of Supervisors' ("Board") power to set their overall compensation. On September 28, 2021, the Board unilaterally repealed this wage initiative known as "Measure F". The Board failed to submit the repeal to the voters in violation of the California Constitution and the Elections Code. The Board then imposed slightly higher base salaries to commence the break from Measure F.

Placer County Deputy Sheriffs' Association ("DSA") and Noah Frederito (collectively "Petitioners") filed this action to vindicate the will of the voters.

The County's demurrer is without merit. Its gravamen conflates provisions limiting the electorate to referendums over supervisor compensation with those governing employee compensation. The motion fails to acknowledge the Supreme Court has confirmed that legislative decisions of a board of supervisors involving local employee compensation decisions are presumptively subject to initiative and referendum. (*Voters for Responsible Retirement v. Board of Supervisors* (1994) 8 Cal.4th 765, 776–777 (*Voters*).) The County also omits the fact that the California Supreme Court held in *Kugler v. Yocum* (1968) 69 Cal.2d 371, 374 (*Kugler*) that the power to set minimum employee compensation "falls with the electorate's initiative power."

Regardless of the efficacy of the original 1976 initiative, the Board has independently adopted and amended resolutions codifying the provisions of Measure F in County Code section 3.12.040 (collectively referred to as "Section 3.12.040"). In 1980 it adopted a Charter providing an additional source of initiative powers. In 2002 and 2006, Board submitted initiatives asking the voters to whether to amend Section 3.12.040 to repeal the salary formula and advising that a "no" vote was "a vote to retain the existing ordinance." In both elections, the voters chose to retain Section 3.12.040. The demurrer doesn't contest the validity of these initiative elections, which provide independent grounds to grant the writ.

The three election results not only trigger the protections of Elections Code section 9125, but also constitutional protections of the initiative power. The people's reserved power of initiative must be liberally construed to prevent the Board from annulling the will of the voters by simply passing the repeal which the voters twice rejected. (See *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591 ("*Associated Home Builders*"); see also *Rubalcava v. Martinez* (2007) 158 Cal.App.4th 563, 573 (*Rubalcava*) [holding the courts may properly devise procedures necessary to protect these powers even in the absence of a constitutional provision expressly addressing such conduct].)

The County's other arguments also lack merit. The County misapprehends the import of *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278 (*Riverside*), which involved State mandated delegations of local control over compensation, but not whether the electorate can choose to delegate such authority through the initiative process. Similarly, Respondent's motion misconstrues the import of *Voters, supra,* 8 Cal.4th 765, which narrowly held that the MMBA preempted a referendum on a labor contract that had been bargained and agreed upon by the parties. The Court rejected the contention that Article XI, Section 1(b) broadly restricts the initiative or referendum process on employee compensation decisions. Accordingly, courts have long held that matters within the scope of representation may be the subject matter of a voter initiative, so long as the MMBA meet and confer obligations are first met. (See *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591 (*Seal Beach*); *Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898 (*Boling*).)

For these reasons, the County's demurrer lacks merit and should be denied. Petitioners' have sufficiently stated a claim that the County violated the California Constitution, Elections Code, and Section 3.12.040.

II. SUMMARY OF ALLEGATIONS IN FIRST AMENDED PETITION

In 1976, the voters of Placer County passed an initiative known as Measure F. (Petition ¶ 5, Declaration of Ryan Ronco ISO County's RFJN ("Ronco Dec.") Exhibit C).) Measure F, which was codified in Section 3.12.040, fixed the salaries of sworn employees of the Placer County

Sheriffs' Office at the average salary for each comparable position in the sheriff's offices for Nevada, El Dorado, and Sacramento counties. (*Ibid.*)

In 1980, the voters established the Placer County Charter, which is now codified in the County Code[1]. (Petition ¶ 7.) Charter section 302(d) provides that the "Board shall provide, by ordinance, for the number of assistants, deputies, clerks, and other persons to be employed from time to time in the several offices and institutions of the county, and for their compensation." (*Ibid.*) Section 604 provides that all laws in effect at "all laws of the county in effect at the County Code section effective date of this Charter shall continue in effect according to their terms unless contrary to the provisions of this Charter." (Petition ¶ 8.) Section 607(a) provides "[t]he electors of the county may be majority vote and pursuant to general law … [e]xercise the powers of initiative and referendum." (Ronco Dec., Exh. D.) Prior to 2020, the County has consistently construed Measure F's salary setting provisions as harmonious with the Charter's general grant of authority to the Board to provide for compensation. (Petition ¶ 9.)

In 2002, both the County and DSA wanted to negotiate a base salary that deviated from the Measure F formula. (Petition ¶ 12.) The County's representatives informed the DSA that Measure F formula set the base salary. Mutually desiring to eliminate Measure F, the County agreed to place "Measure R" asking the voters whether to repeal Measure F. (*Ibid.*) The County informed the voters that "[a] 'NO' vote on this measure is a vote to retain the existing ordinance." (Petition ¶¶ 12, 14, Exh. A.) Measure R did not pass, and as a result in 2006, the County placed Measure A on the ballot once again seeking to repeal Measure F. (Petition ¶¶ 12,14.) The voters rejected Measure A.

Over the past 44 years, County has adhered to the Measure F formula and has affirmed Measure F multiple times through the adoption and modifications of section 3.12.040. (Petition ¶ 19.) The parties historically incorporated the Measure F formula in their labor agreements and negotiated other pays and benefits so that base salary was only about half of compensation. (Petition ¶ 17.) As recently as January 12, 2021, the Board adopted an Ordinance amending Section

[1] The Placer County Charter and County Code can be accessed here: http://qcode.us/codes/placercounty

3.12.040 to exclude certain managers and affirming the application of Measure F to DSA members. (Petition ¶ 20.)

On September 28, 2021, the Board adopted Ordinance 6104-B, which effectively amended Section 3.12.040 to repeal the Measure F formula. (Petition ¶ 67, Exhibit I.) On September 28, 20201, the Board also adopted Resolution 6105-B, which increased the base salaries of deputies and sergeants by 1.09% and 1.41%, respectively, above the amount set by Measure F in February of 2021. (Petition ¶ 66, Exh. H.) The Board adopted these Ordinances without placing the repeal of the voter-enacted Measure F on the ballot. (Petition ¶ 70.)

The Petition alleges that the County's actions violated the California Constitution's protections of the voters' initiative power and Elections Code section 9125, which dictates that "no ordinance proposed by initiative petition...shall be repealed or amended except by a vote of the people." (Petition ¶¶ 76-80.) As the repeal was invalid, Petitioners also allege that the County violated Section 3.12.040 by imposing salaries that deviated from the Measure F formula. (Petition ¶¶ 81-86.) The County has also failed to implement the requisite January 2022 salary adjustment.

III. LEGAL STANDARD

The sole function of a demurrer is to test the sufficiency of the complaint. (*Childs v. State of California* (1983) 144 Cal.App.3d 155, 163.) The issue before the court is whether the complaint, as a whole, contains sufficient facts to apprise the defendant of the basis of the claim upon which the plaintiff is seeking relief. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) The paragraphs of a complaint should be read in context with factual allegations and not read in isolation. (*Ibid.*) Petitioners are entitled to an assumption of the truth of the properly pleaded material facts and the reasonable inferences that may be drawn therefrom. (*Coleman v. Gulf Ins. Group* (1986) 41 Cal.3d 782, 789, fn. 3.) The Court should also view the pleading with a liberal construction so as to affect substantial justice between the parties. (*Addiego v. Hill* (1965) 238 Cal. App. 2d 842, 845.)

A demurrer must be overruled when the complaint states facts constituting a cause of action entitling plaintiff to any relief. (*CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal. App.4th

631, 635.) Moreover, a demurrer is not the appropriate procedure for determining the truth of disputed facts, nor is it the function of the court to speculate as to a plaintiff's ability to support the allegations at trial. (*Cruz v. County of Los Angeles* (1985) 173 Cal.App.3d 1131, 1134.)

IV. ARGUMENT

The demurrer should be denied because the complaint sufficiently alleges violations of the California Constitution, the Elections Code, and Section 3.12.040. Our Supreme Court has repeatedly recognized the vital democratic function of the reserved, not granted, right of the people to adopt or reject local ordinances through initiative in a manner that is co-extensive with the legislative power of the local governing body. (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1078–1079 (*Morgan Hill*).) Our highest Court has repeatedly rejected the County's core argument that Article XI, Section 1(b) precludes any voter initiatives involving employee compensation. (*Kugler*, *supra,* 69 Cal.2d at p. 374 *Voters*, *supra*, 8 Cal.4th at pp. 776–777.) Accordingly, this Court should uphold the longstanding will of the voters and grant the writ.

A. FIRST CAUSE OF ACTION

Petitioner's First Cause of Action asserts that the County violated the California Constitution and Elections Code 9125 by repealing Section 3.12.040 without voter approval. The voters' enactment of Measure F in 1976 was a proper exercise of the voters' initiative power guaranteed by Article II, Section 11 of the Constitution. Further, Measure F has been approved by the voters on three separate occasions, before and after adoption of the County Charter.

1. Measure F Was Validly Adopted by the Voters in 1976.

Placer County voters had the power under Article II, Section 11 of the California Constitution to pass Measure F in 1976. The local electorate's Constitutional right to initiative and referendum is generally co-extensive with the legislative power of the local governing body. (*Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1078-1079.) Setting salaries is legislative, not administrative power of the Board. (*Collins v. City & County of S.F.* (1952) 112 Cal.App.2d 719, 730.) Courts presume that "absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors ... are subject to initiative and referendum." (*Voters, supra,* 8 Cal.4th at p. 777.) Accordingly, "the initiative power must be

liberally construed to promote the democratic process." (*Legislature v. Eu* (1991) 54 Cal.3d 492, 501 ("*Eu*").)It is the court's "solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise." (*Ibid.*) As with statutes adopted by the Legislature, "all presumptions favor the validity of initiative measures and *mere doubts as to validity are insufficient*; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 814 [emphasis added].)

The County's argument that Placer County Voters not possess initiative power over employee compensation in 1976 is based on a fundamental misunderstanding of two appellate court cases: *Meldrim v. Board of Supervisors* (1976) 57 Cal.App.3d 341 ("*Meldrim*") and *Jahr v. Casebeer* (1999)70 Cal.App.4th 1250 ("*Jahr*"). *Meldrim* and *Jahr* are interpreting one sentence in Article XI, Section 1(b) which governs only Board compensation, and therefore has no bearing on this case. Section 1(b) states in relevant part:

> Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

In *Meldrim* and *Jahr*, the voters wanted to pass an initiative setting the compensation of the board of supervisors. The appellate courts interpreted the first sentence in Article XI, Section 1(b) to mean on subjects of **board of supervisors'** compensation, the voters only possess the right to referendum, not initiative. The courts reasoned that the Legislature's inclusion of the term "referendum" indicated that the Legislature intended to foreclose the right to initiative as to supervisors' compensation.

Supervisors' compensation was set by the Legislature until the enactment of a 1970 Constitutional Amendment granting the governing body the power to set their own compensation, subject to referendum which added the first sentence in Section 1(b). (*Voters, supra,* 8 Cal.4th at p. 776.) "The amendment did not affect **employee** compensation, which had been and remained a

matter of local concern." (*Ibid.* [emphasis added]) The sentence addressing **employee** compensation does not contain the referendum language *Meldrim* is predicated upon. As our Supreme Court aptly stated, "In sum, article XI, section 1(b), by itself, neither guarantees nor restricts the right to review, by voter referendum, a board of supervisors' decisions regarding compensation of county employees." (*Ibid.*) *Meldrim* does not support the conclusion that a provision granting legislative power to the Board preempts any initiative powers reserved to the people under Article II, Section 11. Thus, to the extent *Meldrim* remains good law, it has no bearing on Measure F.

The demurrer's claim that Measure F was invalid from inception is based on a fatally flawed interpretation of Section 1(b) as prohibiting initiative powers over employee compensation. Our Supreme Court unequivocally foreclosed that argument. *Voters* broadly supports initiative powers over local employee compensation, so long as the initiative process comports with the safeguards of the MMBA.

"If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it. Thus, we will presume, absent a clear showing of the Legislature's intent to the contrary, that legislative decisions of a city council or board of supervisors—**including local employee compensation decisions**—are subject to initiative and referendum. (*Voters, supra,* 8 Cal.4th at pp. 776–777 [citations omitted, emphasis added].)

As Justice Kennard explained in her concurrence, Section 1(b) merely enshrined the referendum right regarding supervisor compensation separate from the general right of initiative and referendum in Article II, Section 11. (*Id.* at pp. 789-790.) Thus the 1970 amendment of section 1(b) did not alter the power of local voter initiatives relating to employee compensation, rather those remain unchanged in Article II, Section 11. (*Ibid.*)

Jahr artfully distinguishes *Voters* to resuscitate *Meldrim* by cabining its limitation on initiative powers to supervisor compensation based on the Legislature's delegation of this power to the Board in 1970, subject to "adequate" referendum protections. (*Jahr, supra,* 70 Cal.App.4th at pp. 1255-1260.) *Jahr* distinguishes initiatives governing supervisors' compensation, holding *Voters* approval of employee compensation initiatives addressed "the ambiguity in the last sentence of

article XI, section 1(b)—which contains no mention of referendum or initiative powers", whereas the sentence "expressly refer[ing] to the referendum power ... escapes the claim of ambiguity raised in *Voters*." (*Id.* at p. 1257.) As such, *Meldrim* and *Jahr* provide no authority for the claim that the second sentence of section 1(b) prohibits Measure F. Rather, employee compensation has long been a legislative power coextensive with the voters' initiative power guaranteed by Article II, Section 11.

Further, in *Kugler, supra,* 69 Cal.2d at p. 374, the Supreme Court held "the salaries of city firemen, fall[] within the electorate's initiative power." *Kugler* involved a proposed initiative, which provided that the salaries of firefighters could not be less than the average of the salaries received by firefighters in the City and County of Los Angeles. In upholding the constitutionality of the initiative, the Court noted the charter provided the city council the power to set employees' salaries, and the electorate the "right to adopt any ordinance which the council might enact." The Supreme Court held that "[t]he trial court correctly concluded that the subject matter of the proposed ordinance, that is the salaries of city firemen, falls within the electorate's initiative power." (*Ibid.*) The charter initiative powers mirror the Article II, Section 2, which are also co-extensive with the powers granted to local charters are co-extensive with the powers granted under the Constitution. Similarly, in *Spencer v. City of Alhambra* (1941) 44 Cal.App.2d 75 (*Spencer*), the Court of Appeal for the Second District upheld a voter initiative that established the minimum salaries for police officers. The court reasoned that the city charter "reserved to the electors the broadest possible powers in the matter of initiative legislation" including the power to fix employee wages. (*Id.* at p. 80.)

The County may reply that *Kugler* and *Spencer* deal with initiatives setting *minimum salaries*, and thus to not apply to Measure F which provides both a floor and a ceiling for deputies' salaries.[2] However, Measure F only sets base "salary" for deputies. Under Measure F, the County still retains ultimate discretion to set "compensation" as specified in the Charter. Compensation is a broader term than salary. In general, salary is the fixed amount of money the employer pays the

[2] The County's position regarding whether Measure F sets both a floor and ceiling or just a minimum floor has been inconsistent. (See Petition ¶¶ 10-14, 38-41.)

employee over the course of a year in exchange for work performed, and "is a more specific form of compensation." (*Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 397.) Placer County deputies' base salary is only about half of their compensation. (Petition ¶ 17.) The Board retains and has historically exercised its ability to negotiate a higher total compensation package while adhering to Measure F. (Petition ¶¶21-52, 58-63, 64-66, Exh E.)

Further, Measure F must be "liberally construed" and all presumptions must be drawn in favor of its validity. (*Eu, supra*, 54 Cal.3d at p. 501.) . The County has previously interpreted Measure F as setting a floor for salary. (Petition ¶¶ 38-39, Exhibit E.) Thus, if the Court concludes Measure F improperly fixes salary, it should interpret Measure F as setting a *minimum* for deputies' salary. There is no doubt that the electorate has the power to pass an initiative setting a minimum salary for deputies in Placer County.

2. The Placer County Charter Provides an Additional Source of Initiative Power for the 2002 and 2006 Votes to Affirm and Retain Measure F.

The enactment of the Charter in 1980 did not void Measure F, as it remains compatible with the Board's power to set compensation. Measure F merely establishes a base salary floor which represents about half of deputies' total compensation set by the Board. (Petition ¶ 17.) The 1980 Board correctly deemed Measure F as compatible with the Board's power to provide compensation. The Board's determination 42 years ago is presumed to have been regularly performed. (See Evid. Code § 664; see also *Walker v. Los Angeles Cnty.* (1961) 55 Cal. 2d 626, 636.) The Board's determination of compatibility was confirmed by the County CEO's editorial pronouncing Measure F's validity in 2003. (Petition ¶ 13, Exh. B.) Ironically, the enactment of the Charter bolstered the initiative powers of the Placer County by enacting Charter Section 607. Thus, any alleged defects regard the 1976 enactment were cured by the 2002 and 2006 initiative elections to retain it.

Because Section 3.12.040 has been incorporated into labor agreement, it was adopted by the Board, the ordinance was valid in 2002, even if the 1976 vote was deficient. The County has affirmed Measure F multiple times through the adoption of and modifications to Section 3.12.040.[3]

[3] For example, it was affirmed in a Resolution renumbering the ordinance, in ordinances adopting Petitioners' labor agreements which contained the formula, and amended to include new management positions that did not exist in

Thus, at the very least Section 3.12.040 was validity enacted through Board of Supervisors resolutions pursuant to the Board's authority to set compensation under Section 302. The voters affirmed Section 3.12.040 twice after the enactment of the Charter. In 2002, both the County and DSA wanted to negotiate a base salary that deviated from the Measure F formula. The County agreed to place "Measure R" on the ballot seeking to repeal Measure F. (Petition ¶ 12, Exh. A.) Measure R asked the voters, "Shall Placer County Code, Chapter 3, Section 3.12.040 (also known as Measure F) be amended to remove that section in its entirety, thereby repealing that provisions which requires Placer County Sheriff Deputy salaries to be set by averaging the Sheriff Deputy salaries in Nevada County, Sacramento County, and El Dorado County?" The County's impartial analysis on the ballot described a "no" vote as follows: "A "NO" vote on this Measure is a vote to retain the existing ordinance that sets the compensation for Placer County Sheriff's sworn personnel at the same rate as the average compensation level of those sworn law enforcement personnel in comparable positions in the counties of Nevada, Sacramento and El Dorado." (*Ibid.*) Because Measure R did not pass in 2002, the County and the DSA placed "Measure A" on the ballot again seeking to repeal Measure F. (Petition ¶ 14, Exh. C.) A no vote on Measure A was also described to the voters as a vote to retain Measure F. Measure A's attempt to repeal Measure F was also rejected by the voters. Thus, the 2002 and 2006 votes to retain Measure F are a proper exercise of initiative powers, which can only be repealed by a subsequent initiative.

In sum, following its original enactment, Measure F was carried over by the Board with the enactment of the Charter, affirmed twice by the voters, and continuously adopted and implemented by the Board for over 40 years. Even if the original 1976 initiative was invalid, it has since been lawfully adopted by the Board and the voters.

3. The Board Cannot Repeal Measure F Without a Vote of the Electorate.

The County cannot thwart the will of the voters by unilaterally repealing Measure F. Elections Code section 9125 provides, in relevant part, "No ordinance proposed by initiative petition and adopted either by the board of supervisors without submission to the voters or adopted

1976. As recently as January 12, 2021, the Board adopted an ordinance amending section 3.12.040 to exclude certain managers and affirming the application of Measure F to DSA members. (Petition ¶ 13, Exh. D.)

by the voters **shall be repealed or amended except by a vote of the people**." (Emphasis added.) Section 9125 "has its roots in the constitutional right of the electorate to initiative, ensuring that successful initiatives will not be undone by subsequent hostile boards of supervisors." (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 788.) Thus courts "jealously guard" the initiative power and "resolve any reasonable doubts in favor of its exercise." (*Eu, supra,* 54 Cal.3d at p. 501.)

The implied and self-enacting provisions of the California Constitution protecting the initiative and referendum process provide a separate and independent basis for requiring a vote of the people before repealing Section 3.12.040. (*Rubalcava, supra,* 158 Cal.App.4th at p. 571 ["The courts may properly devise procedures necessary to protect the power."].) In the context of a referendum vote, our Supreme Court held "[s]ince its inception, the right of the people to express their collective will through the power of the referendum has been vigilantly protected by the courts. Thus, it has been held that legislative bodies cannot nullify this power by voting to enact a law identical to a recently rejected referendum measure." (*Assembly of State of Cal. v. Deukmejian* (1982) 30 Cal.3d 638, 678.) The protection of the referendum process should be equally applied to initiative powers here. Since the electorate twice voted to retain the base salary formula for DSA members, this court should prohibit the County from nullifying the will of the voters by repealing the same ordinance they voted not to repeal.

4. The MMBA Does Not Preempt Measure F.

The County's argument that Section 3.12.040 is preempted by Government Code section 3505 is unreasonable and should not be given any weight. Despite the County's misrepresentation, *Voters, supra,* 8 Cal.4th 765 is distinguishable and has no relevance here. *Voters* recognized a narrow referendum exemption involving only the adoption of an agreed upon labor contract based on the requirements Government Code Sections 3505.1 and 25123(e). The statutes respectively reserve to the governing body the right to accept or rejected a negotiated labor agreement and requires that implementation of such an agreement takes effect immediately. Because the adoption of labor agreements, once negotiated with the employee organization, is a matter of statewide concern, once adopted the agreement is preempted from the referendum process. (*Voters, supra,* 8 Cal.4th at 771.) In *Voters*, "[t]he Supreme Court was focused on whether employee compensation

was subject to referendum, not whether either determination could be accomplished through initiative." (*Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 702.) Measure F was a voter initiative setting a base salary, not a referendum on an MOU.

Moreover, the mere fact that the subject matter of an initiative is within the scope of bargaining under the MMBA, does not automatically mean that the MMBA preempts it. The MMBA does not forbid the passage of initiatives related to wages, hours, or working conditions, it merely requires that the governing body meet and confer with the union prior to placing such initiatives on the ballot. (See, e.g., *Boling, supra,* 5 Cal.5th 898 [MMBA required the city to meet and confer with the union prior to placing an initiative on the ballot which would have reduced employee pensions]; *Seal Beach, supra,* 36 Cal.3d 591 [MMBA's requirement that the city council meet and confer with the unions prior to enacting charter amendments related to the penalty for strikes did not conflict with city council's constitutional authority.]). The California Supreme Court has held that "without an unambiguous indication that a provision's purpose was to constrain the initiative power, we will not construe it to impose such limitations." (*California Cannabis Coalition v. City of Upland* (2017) 3 Cal.5th 924, 945–946.) Further, the MMBA itself confirms that nothing in the statute "shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies." (Gov. Code § 3500.) Measure F is not incompatible with the MMBA, and there is no evidence that the Legislature in enacting the MMBA intended to limit the people's initiative authority as exercised in Measure F. Thus, it is presumed that the MMBA does not preempt the people's exercise of their initiative power through Measure F.

5. Measure F Does Not Improperly Delegate Legislative Authority.

The County's argument that Measure F improperly delegates the Board's authority to the governing bodies in Nevada, El Dorado, and Sacramento counties is specious.

The County's reliance on *Sonoma County Organization of Public Employees v. County of Sonoma* (2009) 173 Cal.App.4th 332 ("*Sonoma*") and *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278 ("*Riverside*") is misplaced. *Sonoma* and *Riverside* did not address whether a **county** can enact a local wage ordinance. Rather, they held that the **State** cannot usurp the county's

authority. Because the determination of wages is a matter of local concern, the State cannot dictate employee compensation for cities and counties by imposing interest arbitration. The Supreme Court in *Riverside* pointed out the paramount distinction between the authority of the State and County voters. (*County of Riverside*, *supra*, 30 Cal.4th at 295.) The Court "emphasize[d] that the issue is not whether a county may voluntarily submit compensation issues to arbitration, i.e., whether the county may delegate its own authority, but whether the Legislature may compel a county to submit to arbitration involuntarily." (*Riverside*, *supra*, 30 Cal.4th at p. 284.) Thus, *Riverside* and *Sonoma* are not relevant.

Further, in *Kugler*, the Supreme Court held the proposed initiative did not impermissibly delegate legislative power to the City and County of Los Angeles to set employee compensation. The Court reasoned that "the proposed ordinance contains built-in and automatic protections that serve as safeguards against exploitive consequences from the operation of the proposed ordinance. Los Angeles is no more anxious to pay its firemen exorbitant compensation than is Alhambra. The Legislature could reasonably assume that competition coupled with bargaining power would provide a safeguard against excessive prices." (*Id.* p. 382 [internal citations omitted]). As discussed above, Measure F is analogous to the wage ordinance at issue in *Kugler* and contains the same safeguards by tying Placer County deputies' salaries to the salaries of deputies in neighboring counties.[4] Thus, the County's meritless argument that Measure F is an impermissible delegation of legislative authority is directly contrary to California Supreme Court precedent and should be disregarded.

In conclusion, Petitioners have sufficiently plead that the County violated the California Constitution and Elections Code. Thus, the Court should deny the County's demurrer to the First Cause of Action.

B. SECOND CAUSE OF ACTION

Petitioner's Second Cause of Action asserts that the County violated the Constitution and Section 3.12.040 by imposing on the DSA a salary that deviated from the formula. Petitioner's

[4] Measure F provides the County even greater safeguards given Placer County's much stronger financial position and higher cost of living relative to Sacramento, Nevada and El Dorado Counties.

claim is not fatally uncertain. Even if a "complaint is in some respects uncertain" courts should overrule a demurrer if "[the] allegations, liberally construed, are sufficient to apprise the defendant of the issues that he or she is to meet. (*Butler v. Sequeira* (1950) 100 Cal.App.2d 143, 145; citing *Khoury v. Maly's of Cal.* (1993) 14 Cal.App.4th 612, 616.)

As set forth above, the voters reserved right to enact local legislation is constitutionally protected. Separate and independent from the requirements of Section 9125, the Constitution requires the courts to fashion protections against efforts to nullify the will of the voters. This case presents the Court with such an opportunity to safeguard initiative powers by preventing the Board from nullifying the 1976, 2002, and 2006 determinations of the voters. Here, Petitioners have alleged that the Constitution create a clear, present and ministerial duty to adhere to Measure F by setting salaries in conformance with the formula. This is sufficient to place the County on notice, and thus their demurrer should be denied on these grounds. Alternatively, Petitioner requests leave to amend additional allegation regarding these Constitutional safeguards, as well as the new violation of Section 3.12.040 that occurred when the County failed to adjust salaries in January of 2022.

C. THE COURT SHOULD GRANT LEAVE TO AMEND.

Alternatively, if the Court believes that Petitioners failed to adequately allege these facts and demonstrate a claim to relief against the County, Petitioners respectfully request leave to amend the Petition.

Pursuant to California Code of Civil Procedure section 472a(c) "if a demurrer is sustained, the court may grant leave to amend the pleading upon any terms as may be just and shall fix the time within which the amendment or amended pleading shall be filed." Requests to amend a pleading that has been challenged by demurrer are routinely granted, and amendments should be liberally permitted. (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1119.) Unless an original complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion. (*King v. Mortimer* (1948) 83 Cal. App.2d 153, 158.) Therefore, if the Court determines that any of Petitioners claims are uncertain or fail to state a claim, the Court should grant Petitioners leave to amend to correct the deficiencies.

V. CONCLUSION

For all the foregoing reasons, the Court should deny the County's demurrer in its entirety, or in the alternative, grant Petitioners leave to amend.

Respectfully Submitted:

DATED: February 17, 2022

MASTAGNI HOLSTEDT, APC

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Attorneys for Petitioners

PROOF OF SERVICE

SHORT TITLE OF CASE: ***Placer County DSA, et al. vs. County of Placer***

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and am not a party to the within action. My business address is 1912 I Street, Sacramento, California 95811. My e-mail is jdelgado@mastagni.com.

On **February 17, 2022**, I served the below-described document(s) by the following means of service:

X BY OVERNIGHT DELIVERY [C.C.P. §§1013(c) & (d)]:
I enclosed the below-described documents in a sealed envelope/package provided by an overnight delivery carrier and addressed to the persons as set forth below. I placed the envelope/package for collection and overnight delivery at the overnight delivery carrier's office or regularly utilized drop box; and

X BY ELECTRONIC SERVICE [C.C.P. §1010.6(a)]:
Based on a court order or an agreement of the parties to accept electronic service, I caused a .pdf version of the below-described documents to be sent to the persons at the electronic mail addresses set forth below.

NAME/DESCRIPTION OF DOCUMENT(S) SERVED:

- **PETITIONERS' OPPOSITION TO RESPONDENT'S DEMURRER**

ADDRESSES OF SERVICE:

Michael Youril myouril@lcwlegal.com Lars Reed lreed@lcwlegal.com Liebert Cassidy Whitmore 5250 North Palm Ave, Ste 310 Fresno, CA 93704	

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was executed on **February 17, 2022,** at Sacramento, California.

Jessica Delgado